FILE COPY

FILED
MAR 26 1951
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 575

NETHERLANDS MINISTRY OF TRAFFIC, DIRECTORATE GENERAL OF SHIPPING,

Petitioner,

v.

THOMAS STRIKA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHESTER A. HAHN,
Counsel for Respondent,
250 West 57th Street,
New York 19, N. Y.

March 22, 1951.

INDEX

PAGE

Reasons for Denying the Writ 2

Conclusion 9

CASES CITED

The Arizona v. Anelich, 298 U. S. 110, 122 8

Belden v. Chase, 150 U. S. 674 ..... 8, 9

Guerini v. U. S., 167 F. 2d 352 8

International Stevedoring Co. v. Haverty (272 U. S. 50, 71 L. ed. 157, 47 S. Ct. 19) 6

O'Donnell v. Great Lakes Co. (318 U. S. 36) 4, 5, 6

The Osceola (189 U. S. 159) 6

Seas Shipping Co. v. Sieracki (328 U. S. 85) ...4, 5, 6, 7, 8

Socony Vacuum Oil v. Smith, 305 U. S. 424, 429, 59 S. Ct. 262 (1938) 8

Swanson v. Marra Brothers, Inc., 328 U. S. 1 5

AUTHORITIES CITED

Suits in Admiralty Act (Public Law 685, 80th Cong., Second Sess.) 2, 3, 7

1948 U. S. Code Congr. Service, p. 1900 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 575

NETHERLANDS MINISTRY OF TRAFFIC, DIRECTORATE GENERAL OF SHIPPING,

Petitioner,

v.

THOMAS STRIKA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This action was tried on the Civil side of the United States District Court for the Southern District of New York before Honorable Irving R. Kaufman, U. S. D. J., and a jury. Judgment was entered after a special verdict of the jury under Rule 49 F. R. C. P.

Based upon the answers to seven questions submitted to the jury, judgment was rendered in favor of the plaintiff, Respondent here, and against the defendant, Petitioner in this Court, in the sum of $67,843.48 representing damages, costs and interest. The jury found that the damages were $75,000.00 and that the plaintiff contributed to the extent of ten (10%) percent to the happening of the accident (R. 1033).*

* References are either to folios or pages of the record unless otherwise indicated.

The cause of action was based on personal injuries sustained by plaintiff, a foreman of longshoremen, whose duties took him on board the vessel and some times to the dock (R. 58-59; 63). He sustained injury while on the wharf alongside the vessel, helping to replace certain large metal pontoon hatch covers aboard the vessel. In doing this, bridles supplied by the ship (R. 1031) were used and it was necessary to use the winches, booms and falls of the ship (R. 328). The bridles were unsuitable, in that they consisted of two separate devices rather than one (R. 547; 794; 910), as a result of which, one of the bridles jumped out of the hook of the fall (R. 86-87) after it had risen a few feet from the ground (R. 279) causing one end of the cover to fall (R. 86), striking plaintiff, causing injuries which necessitated the amputation of his right leg (R. 107). The questions submitted to the jury and the answers thereto are set forth in the record (R. 1031-1033) and are sufficiently summarized in the Petitioner's brief (Pet. brief, pp. 3-4).

Liability was imposed by the Trial Court on the basis of unseaworthiness, not negligence (R. 1127).

Reasons for Denying the Writ

1. Petitioner urges that this writ should be granted alleging that this is the first time that the point involved on this appeal has been raised in any Court. Respondent denies this, as will appear more fully below. However, if this question were an open one, it has become academic since the enactment of the amendment to the *Suits in Admiralty Act* (Public Law 685, 80th Cong., Second Sess.) [H.R. 238] which became law on June 19th, 1948 (1948 A.M.C. 1060). This Act, entitled: "*Extension of Admiralty Jurisdiction,*" reads in part:

> "That the admiralty and maritime jurisdiction of the United States shall extend to and include all cases of

damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

The entire basis of petitioner's request for this writ is based upon the theory that since respondent was momentarily on the dock, the maritime law of the United States would not obligate the shipowner to provide him with a seaworthy vessel. This question, if not previously settled by judicial fiat, was certainly finally determined by the extension of the admiralty jurisdiction by amendment of the *Suits in Admiralty Act, supra.* It was the opinion of the United States Senate, according to its report appended to that Act, that the cause of action in favor of a person on land which was invoked in this case, always existed and was merely codified by the amendment to the Suits in Admiralty Act. The report states in part:

"Adoption of the bill will not create new causes of action. It merely specifically directs the Courts to exercise the admiralty and maritime jurisdiction of the United States already conferred by Article III, Section 2 of the Constitution and already authorized by the Judiciary Acts." (1948 U. S. Code Congr. Service p. 1900.)

The Honorable the Secretary of the Navy concurred with the Senate Committee stating:

"H. R. 238 would extend the traditional admiralty jurisdiction to include damage occasioned by a vessel to land structures. At the present time, such causes of action have to be maintained on the common law side." (1948 U. S. Code Congr. Service p. 1900.)

The purpose of the bill was clearly stated by the Committee:

"The bill will bring United States practice respecting maritime torts into accord with that followed by the

> British, who by a series of statutes, beginning in 1840, have restored admiralty jurisdiction in situations of this character and brought the British law into harmony with that of most European countries." (1948 U. S. Code Congr. Service p. 1899.)

It is obvious therefore that the question which Petitioner seeks to argue, has, by statute, at least, become academic and if this case involved an accident which occurred subsequent to the amendment above referred to, the statute would, in the words of the majority of the Court of Appeals which affirmed this judgment:

> "Public law 695 of June 19th, 1948 has now probably laid all such doubts, but we think that it was not necessary in order to support a recovery in this particular situation" (185 F. 2d 555).

2. The decision of this Court in *Seas Shipping Co.* v. *Sieracki* (328 U. S. 85) has already decided this question. It is true that in the *Sieracki* case, *supra,* the longshoreman who was injured, was on board a vessel when the injury occurred and this Court, in its decision in the *Sieracki* case, pointed out in a footnote (footnote 17, p. 99) that the Court was not there "concerned with the question whether the same policy extends to injuries incurred ashore by a stevedore engaged in the same work. * * *"

Obviously, in the *Sieracki* case, this precise point was not presented for adjudication. The underlying principle, however, that a longshoreman, doing work traditionally done by a seaman, was entitled to the same protection as a seaman as regards the seaworthiness of the vessel was there decided. This Court answered that question in the affirmative. It appears from a careful analysis of that decision that this Court would not have come to any other conclusion if the longshoreman in that case had been on land rather than on the ship. As a matter of fact, it would appear from the decision of this Court in *O'Donnell* v.

Great Lakes Co. (318 U. S. 36), that the same conclusion would ensue if the longshoreman were on land, since the *O'Donnell* case involved injuries to a seaman injured on the wharf alongside the ship.

If a longshoreman while working aboard a vessel, doing the work of a seaman, is entitled to the same protection as a seaman as regards a seaworthy vessel (*Sieracki* case), and if a seaman, while working on the wharf alongside his ship, is entitled to a seaworthy vessel (*O'Donnell* case), it would seem to follow with the simplest logic, that the longshoreman while working on the wharf, is entitled to indemnity if he is injured by reason of the unseaworthiness of the vessel or her gear.

The petitioner's argument is apparently based on a false premise. This applies to all of the questions upon which petitioner urges that this writ should be granted. The nub of this error is that petitioner has refused to accept the fact that liability in this case is based not upon negligence, but upon unseaworthiness.

Petitioner argues further that this Court's decision in *Swanson* v. *Marra Brothers, Inc.*, 328 U. S. 1, is authority for denying recovery to the plaintiff in this case. This argument evinces a complete misunderstanding of this Court's decision in the *Swanson* case. The *Swanson* case merely held that the longshoreman could not sue his employer under the Jones Act because of the operation of the State Compensation Act which provided that as between the longshoreman and his employer, the Compensation Act was the longshoreman's only remedy. The *Swanson* case in no way touched upon the liability existing between a longshoreman and a third party not his employer, which was passed upon in the *Sieracki* case.

It is respectfully submitted that while the narrowly defined issue here presented may not have been specifically ruled upon by this Court in so many words, this Court has clearly set forth the rule of law to be followed in a

series of cases beginning in 1902. Commencing with its decision in *The Osceola* (189 U. S. 159), which flatly held for the first time that the Maritime Law of the United States coincided with the general Maritime Law of the commercial world, this Court held that a seaman was entitled to full indemnity where his injuries were occasioned by the unseaworthiness of a vessel or its gear.

In 1926 in *International Stevedoring Co.* v. *Haverty* (272 U. S. 50, 71 L. ed. 157, 47 S. Ct. 19), this Court held that a longshoreman was clothed with the rights of a seaman in certain situations. The Court based its opinion on the philosophy of the law, in its endeavor to place the burden of the cost of injury where such burden could be best borne. Following the *Haverty* case, *supra,* the *Sieracki* case in 1946 held flatly that a longshoreman engaged in loading or discharging a vessel was doing the work of a seaman; that he was entitled to the same protection as a seaman while engaged in such work and held that where a longshoreman sustains injury as the result of an unseaworthy vessel, he was entitled to indemnity by the owners of the vessel, regardless of negligence or fault. At the same time, the Court held in the *O'Donnell* case, *supra,* that one of the rights of a seaman was to be protected against an unseaworthy vessel, whether he was on the vessel at the moment or momentarily on the wharf alongside it. Coupling the reasoning of this Court in the *Sieracki* case with that in the *O'Donnell* case, it seems clear that a longshoreman in the position of the seaman in the *O'Donnell* case, would be entitled to be warranted a seaworthy vessel when engaged in work in conjunction with that vessel, even though he was momentarily not on the vessel.

3. The operation of the New Jersey State Workmen's Compensation Act, urged by petitioner as a defense to the action, and a reason for the granting of this writ, does not in any way affect the liability of the third person,

the owner of the vessel, to the seaman. Like all other compensation acts, it defines and makes exclusive the rights of the employee against the employer (N. J. R. S. 34:15-7, *et seq.*). Petitioner urges that since the injury was occasioned while the plaintiff was on the wharf, the action was non-maritime in nature and would be controlled exclusively by local State law regarding negligence without any reference to unseaworthiness. The question is rather whether a form of liability without fault will be applied in a certain set of circumstances.

It is submitted that the requirement to furnish a seaworthy vessel is one which attaches to the privilege of owning and operating a vessel and has no reference to local State law. Rather it is a duty or obligation pressed upon the owner of a vessel in licensing him to own and operate it. It is submitted that it was upon this principle that the *Sieracki* case was decided and not upon the principle as to whether the longshoreman was aboard the vessel or on the wharf.

Also in this point, the petitioner seems to have confused the word "Admiralty" with the word "Maritime". Before the *Extension of the Suits in Admiralty Act, supra,* at the time when this accident happened, Strika could not have enforced his claim in the forum known as the "Admiralty Court" but the "maritime" right which was the basis of the liability was enforcible at law. This Court so stated in the *Sieracki* case, *supra,* at page 88.

> "It is now well settled that a right peculiar to the law of admiralty may be enforced either by a suit in admiralty or by one on the law side of the Court. *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255, 259."

4. Petitioner also urges that the finding that plaintiff contributed to the accident to the extent of ten (10%) percent is a complete bar to this action.

Petitioner has not urged this question either in the District Court or in the Circuit Court of Appeals. Here again, petitioner has confused the basis of this cause of action which is "unseaworthiness" with the general rules applying to "negligence". Contributory negligence has never been a bar to a suit based on unseaworthiness but may be considered only in mitigation of damages. This Court has so held on numerous occasions. It will be recalled that in the *Sieracki* case, *supra*, the Court said in a footnote (footnote 11):

> "Contributory negligence has never been a defense in suits brought by seamen to recover for injuries due to a ship's unseaworthiness but has been applied merely in mitigation of damages."

The case of *Belden* v. *Chase*, 150 U. S. 674, decided in 1893, cited by petitioner in support of its application, involved negligence not unseaworthiness. Similarly, in *Guerrini* v. *U. S.*, 167 F. 2d 352, the case involved negligence not unseaworthiness.

On the other hand, this Court in *Socony Vacuum Oil* v. *Smith*, 305 U. S. 424, 429, 59 S. Ct. 262 (1938) said:

> "Contributory negligence, then as now, was not a defense in suits brought by seamen to recover for injuries attributable to defective equipment, but was ground only for mitigation of damages."

Also in *The Arizona* v. *Anelich*, 298 U. S. 110, 122, this Court said:

> "Before the Jones Act contributory negligence was ground for mitigation of damages in suits brought by seamen to recover for injuries attributable to defective equipment."

From these citations, it is obvious that petitioner's conclusion that the Court of Appeals refused to follow this

Court's holding in *Belden* v. *Chase, supra,* and disregarded its own decision, is completely fallacious and is based upon petitioner's confusion between a cause of action based on unseaworthiness such as the instant case and one based upon negligence.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be denied.

Respectfully submitted,

CHESTER A. HAHN,
Counsel for Respondent,
250 West 57th Street,
New York 19, N. Y.

March 22, 1951.